

ARIZONA DEPARTMENT OF ECONOMIC SECURITY

Program Name: Vocational Rehabilitation (VR)

Policy Number: VR-15.4-v3

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Last Revision:

CHAPTER 15: Appeals

Section 15.4: Fair Hearing

I. Policy Statement

This policy outlines the Fair Hearing process of a Request for Appeal, when an applicant/client chooses this option to dispute a decision affecting the provision of Vocational Rehabilitation (VR) services.

II. Authority

Authority for policies contained in this document includes the following:

- Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3101 et seq.
- Title IV Amendments to the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.
- State Vocational Rehabilitation Services Program, 34 CFR § 361.57 (e-f), Review of determination made by designated State unit personnel.
- Arizona Revised Statutes:
 - § 23-502, and
 - § 23-503.
- Arizona Administrative Code, Title 6, Chapter 4, § R6-4-210, Appeal Resolution Options.

III. Applicability

This policy applies when an applicant/client selects a Fair Hearing in a Request for Appeal.

IV. Standards

A. General Provisions

1. An applicant/client must submit a Request for Appeal as outlined in Section 15.1 Overview of Appeals of this policy manual, and select the option for a Fair Hearing.
2. A Fair Hearing must be held within 60 calendar days of the date the applicant/client's Request for Appeal, unless an Informal Review resolution or a Mediation agreement is achieved before the 60th day, or the parties agree to a specific extension of time.
3. VR must attempt to resolve the dispute before the Fair Hearing, via the Informal Review or Mediation process when requested by the applicant/client or their legal guardian.
4. VR is not responsible for any costs associated with legal representation of an applicant/client during the Fair Hearing process.
5. The Rehabilitation Services Administration (RSA) Ombudsman must:
 - a) Request a Fair Hearing within seven (7) calendar days of receiving a written request for the fair hearing from the applicant/client,
 - b) Notify the Department of Economic Security (DES) Office of Appeals that a Fair Hearing must be held within 60 calendar days of the receipt date of the initial written Request for Appeal from the applicant/client,
 - c) Upon receipt of the Hearing Officer's written decision, the RSA Ombudsman will review the findings and staff the case with the RSA Administrator and Rehabilitation Services Senior Policy Manager as needed, and
 - d) Inform all involved parties of the outcome of the Fair Hearing, and will facilitate any additional steps if required.
6. Hearing Officer: The Impartial Hearing Officer for a Fair Hearing must be selected from a list of qualified Impartial Hearing Officers maintained by the DES Office of Appeals.

B. Participation in a Fair Hearing

1. All parties involved must prepare and forward a summary of information and evidence relevant to the VR Decision being appealed by the applicant/client to the RSA Ombudsman at least ten (10) calendar days before the Fair Hearing.
2. The applicant/client or their legal guardian must be allowed to present witnesses during the Fair Hearing and to examine all witnesses and other relevant sources of information and evidence.

3. All parties may be asked to participate in a pre-hearing meeting at least ten (10) calendar days before the fair hearing.
4. The applicant/client must provide a request for an extension in writing to the RSA Ombudsman, the Office of Appeals, or the Arizona Attorney General when they need to postpone the Fair Hearing from the date on the original Request for Appeal.
5. VR must agree to extend the timeframe for the provision of a Fair Hearing in instances when the applicant/client, or their legal guardian, requests an extension in writing from the date on the original written request for appeal.
6. VR staff members involved in the VR Decision being appealed must participate in the Fair Hearing process and attend the Fair Hearing as requested by the RSA Ombudsman or by an official of the Administrative Law Office and/or the Arizona Attorney General.

C. Withdrawal of a Fair Hearing

1. An applicant/client may withdraw a Fair Hearing request by submitting a written request to withdraw to the RSA Ombudsman or the Office of Appeals at any time before the Hearing Officer issues a decision.
2. A written withdrawal request and dismissal of the Fair Hearing submitted is considered accepted when the Office of Appeals receives the request, and the Hearing Officer determines that the withdrawal was made voluntarily and knowingly requested.
3. The Office of Appeals must accept a written withdrawal request and dismiss the Fair Hearing submitted to the RSA Ombudsman only if the Hearing Officer accepts the withdrawal and finds that the withdrawal has been voluntarily and knowingly requested.
4. A withdrawal of a Fair Hearing is effective as soon as the Office of Appeals processes the withdrawal, but no later than 10 calendar days after receipt of the withdrawal.

D. Hearing Officer's Decision

1. The Hearing Officer must issue a Fair Hearing decision within 30 calendar days of the completion of the Hearing and a full written report of the findings and grounds for the decision.
2. A copy of the Hearing Officer's decision must be provided to the applicant/client and RSA.
3. The Hearing Officer must make a decision based on the provisions of the approved vocational rehabilitation services portion of the Unified or Combined State Plan, the Act, federal vocational rehabilitation regulations,

and State regulations and policies that are consistent with federal requirements.

4. VR must comply with the Fair Hearing decision and instructions of the Hearing Officer.
5. The Hearing Officer's decision is final, except that any party may request a DES Director Review of a Fair Hearing decision and/or a party may bring a civil action, as outlined in Section 15.5 Director Review of Fair Hearing Decision of this policy manual.

V. Procedure

- A. Refer to IV.(A)(2-4), IV.(B)(1),(3),(5)-(6), IV.(D)(4)-(5) above.
- B. Refer to Standard Work, if available.
- C. The VR Counselor must gather and provide all relevant information, within the applicant/client's electronic case file (ECF), related to the VR decision being appealed to the RSA Ombudsman.

VI. Documentation Requirements

The applicant's/client's electronic case file (ECF) must include the following, if applicable:

- A. Request for Appeal, and
- B. Fair Hearing Decision.